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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2801/2016*, **

Communication submitted by:	N.R. (not represented by counsel)
Alleged victim:	The author
State party:	New Zealand
Date of communication:	7 June 2016 (initial submission)
Date of adoption of decision:	28 March 2017
Subject matter:	Fair trial
Procedural issue:	Substantiation of claims
Substantive issue:	Right to a fair trial
Articles of the Covenant:	2 (3), 14 (1) and 16
Article of the Optional Protocol:	2

1.1 The author of the communication is N.R., a national of New Zealand born in 1971. He claims that the State party violated his rights under articles 2 (3), 14 (1) and 16 of the Covenant. The Optional Protocol entered into force for New Zealand on 26 August 1989. He is not represented by counsel.

1.2 On 30 August 2016, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to issue a request for interim measures and determined that no observations from the State party were needed to ascertain the admissibility of the present communication.

The facts as submitted by the author

2.1 On 9 May 2013, the District Court of Auckland issued a five-year restraining order against the author under the Harassment Act 1997 and awarded indemnity costs to the plaintiff, M. This gave rise to the author taking a number of interrelated legal actions against M.

* Adopted by the Committee at its 119th session (6 March-29 March 2017).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.

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2.2 On 3 July 2013, the author filed a civil claim against M for damages before the District Court of Auckland, alleging breach of contract, unjust enrichment, defamation and abuse of legal process. In his amended statement of claim, the author also included abuse of process, breach of confidence and breach of privacy, and a claim under the Consumer Guarantees Act 1993. On 16 October 2013, the District Court of Auckland rejected the author's civil claim. The author appealed this decision at the High Court of New Zealand. Simultaneously, the author filed an application for contempt orders against M and her lawyers with the High Court. M and her lawyers then applied to the High Court for an order striking out the contempt of court proceedings.

2.3 By decision of 21 February 2014, the High Court struck out the contempt of court proceedings and on 30 April 2014, it dismissed the author's appeal. The author's request for leave to appeal was also dismissed by the High Court on 27 August 2014.

2.4 On 14 August 2014, the High Court allowed in part the author's appeal against the District Court's decision in relation to legal costs and reduced the quantum due.

2.5 On 28 October 2014, the Court of Appeal dismissed the author's application for a review of the Registrar's refusal to provide information on whether M had applied for, and been granted, dispensation of the filing fee on her application for leave to cross-appeal. On 27 February 2015, the Supreme Court dismissed the author's leave to appeal the Court of Appeal's judgment on M's filing fee.

The complaint

3.1 The author claims a violation of article 14 (1) of the Covenant related to the misconduct of the various judges and lawyers in the proceedings to which he was a party. He contends that the courts were not competent, independent or impartial because they systematically failed to take properly into account the author's allegations and his objections to the admissibility of evidence, thereby failing to ensure equality of arms and denying him justice. Given the existence of improper influence, pressure, intimidation and intrusion on the part of the courts, the hearings before them were unfair. Additionally, the improper assignment of the author's case to the various judges and the cover-up of those assignments by appellate courts and other authorities in the legislature and the executive constitute judicial corruption. Moreover, the judges were guilty of arbitrary decisions and judicial misconduct since such decisions contained judicial errors against the author. Finally, M's lawyers had a conflict of interest and acted in breach of their overriding duties to the court.

3.2 The author claims a violation of article 2 (3) of the Covenant because no competent, independent and impartial judicial authority in general, and the Supreme Court in particular, can or is willing to investigate the alleged violations of his rights under the Covenant.

3.3 The author also claims that the conduct of the judicial authorities amounts to an effective refusal to recognize him as a person before the law in violation of article 16 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

4.1 Before considering any claim contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether it is admissible under the Optional Protocol.

4.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. It also notes that the author claims that domestic remedies have been exhausted and considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

4.3 The Committee notes that the author's claims under article 14 (1) mainly refer to the assessment of facts and evidence by domestic courts, with which he disagrees. The Committee observes, however, that the author has failed to provide any evidence to support

his allegations that the court decisions relating to him were affected by judicial misconduct, corruption, arbitrariness or lack of judicial independence. Therefore, the Committee considers that the author has not sufficiently substantiated his claims under article 14 (1) for the purpose of admissibility.

4.4 With regard to the author's claims under articles 2 (3) and 16 of the Covenant, the Committee also considers that the author has failed to sufficiently substantiate with specific evidence for the purpose of admissibility his general claims relating to the judicial system of the State party.

5. The Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this decision shall be transmitted to the State party and to the author.